IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17334 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAY @ CHANDU VALKUBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17334 of 2003

MR AR SHAIKH for Petitioner No. 1

MR. L.R. PUJARI, LD. AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, petitioner has challenged the detention order No: PCB/DTN/PASA/59/2003 dated 21-9-2003, passed by Respondent No.2 under section 3 (1) of the Gujarat Prevention of Anti Social Activities act, 1985 (herein after referred to as 'PASA Act' (Annexure-A).

2. In the grounds of detention (Annexure-C) 5 cases under section 454, 457, 380 and 114 of I.P. Code are stated to have been registered against the petitioner in connection with the theft of various articles, including the cash as well as gold & silver ornaments.

3. The statements of two witnesses in unregistered cases have also been referred to suggest that the petitioner is a 'dangerous person' within the meaning of section 2 of the PASA Act. It is not disputed that the acts alleged against the petitioner in registered cases as well as in the unregistered cases are the acts against the individuals. In the case of ASHOKBHAI JIVRAJ JIVABHAI SOLANKI V. POLICE COMMISSIONER, SURAT & ORS, in LPA the Division Bench observed that the cases registered under the provisions of I.P. Code against the detenu, looking to the incidents the cases fall under the maintenance of ,law & order' and not 'public order'; therefore subjective satisfaction arrived by the detaining authority cannot be said to be legal or valid and the order of detention could have been passed for maintenance of 'public order' and the detention order quashed.

4. In the instant case also the acts alleged against the petitioner are directed against the individuals and following the principle laid down in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) the present case would fall under the maintenance of 'law & order' and not 'public order'. In my opinion, the present case is squarely covered by the decision in Ashokbhai Jivraj Jivabhai Solanki (supra) and therefore, the detention order is liable to be quashed and set aside.

5. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCB/DTN/PASA/59/2003 dated 21-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.2 is quashed and set aside. The petitioner detenu Sanjay @ Chandu Valkubhai Solanki is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004 (N.G. Nandi, J)

/vgn